

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF REDMOND**

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3
4 **IN THE MATTER OF APPEAL OF RICK)**
5 **BURNSTEAD CONSTRUCTION FOR A)**
6 **TREE REMOVAL PERMIT)**
7 _____)

FILE NO: L030349
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION

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10 **DECISION**

11 The appeal of the denial of a tree removal permit is **GRANTED**, subject to conditions.

12
13 **INTRODUCTION**

14 The appeal of Steve Watkins of Rick Burnstead Construction of a decision of the Planning
15 Department to deny a tree removal permit came on for hearing before Gordon F. Crandall,
16 Hearing Examiner, on November 19, 2003 at 10:00 am. Dana Farwell, planner, presented the
17 City's case. Appellant Steve Watkins of Rick Burnstead Construction testified in support of the
18 application.

19
20 Testifying under oath were:

21 Dana Farwell, Planner
22 Teresa Kluver, City Arborist
23 Steve Watkins, Appellant
24 Cindy Seremek, Homeowner
25 Casey Seremek, Homeowner

26
27 Also present was Judd Black, Development Review Manager.

28
29 Following the hearing, the Hearing Examiner made a site visit in the company of Farwell,
30 Watkins, Black and Casey and Cindy Seremek, the owners of the residence in which the tree was
located.

1 The following exhibits were offered and admitted:

2 Exhibit A: Planning Department Report dated November 19, 2003

3 Exhibit B: PowerPoint Presentation

4 Exhibit C: Plat Map of Grayson at Abbey Road depicting Lot #38 and NGPE

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6 From the foregoing, the Hearing Examiner makes the following:

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8 **FINDINGS OF FACT**

- 9 1. Burnstead Construction is in the process of constructing homes in the subdivision
10 approved as Fir Glen Estates but also known as Grayson at Abbey Road. A residence has
11 been constructed on Lot 38, which also contains a portion of a Native Growth Protection
12 Easement (NGPE) containing mature evergreen trees. The Lot is adjacent to a much
13 larger NGPE owned by the Homeowners Association. The residence on Lot 38 has been
14 sold to Casey and Cindy Seremek for about \$650,000.00.
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- 16 2. During the purchase of the residence, the Seremeks expressed concern for one of the trees
17 in the NGPE which leaned toward the house. The tree was about 25 feet from the house
18 and very tall. Their concern was that if the tree were to fall it would strike the house with
19 considerable force, threatening the safety of the family. They asked Burnstead
20 Construction to determine whether or not the tree could be removed as a hazardous tree.
21
- 22 3. Burnstead Construction obtained the opinion of Robert W. Williams, consulting arborist.
23 The subject tree consists of two distinct trunks sharing a mutual root system. The trunks
24 are 28 inches and 23.5 inches in diameter at breast height. They are known as co-
25 dominant stems, and the formation of the union at the base of these stems is often weak,
26 because if the crotch is created in at a very acute angle, the bark forms in the crotch and
27 often grows inward. As the tree continues to grow, the expansion of the included bark can
28 force one stem from the other.
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- 1 4. Williams also found evidence of root damage and noted that the lower limbs had been
2 removed making the tree carry its 'sail area' higher on the trunk. His opinion as to the
3 condition of the tree is stated in his written report:
4

5 "Trees most commonly fail when disease or defect in the tree is combined with a
6 change in exposure in the environment. The components that lead to failure are
7 present in the tree that is the subject of this report. The tree has co-dominance at
8 the base and in one of the trunks. There are also indications of root damage.
9 Furthermore, the trees carry their "sail area" high on the trunk placing maximum
10 leverage on the weakened trunks and the root system. The location of the tree on
11 the edge of the stand represents a change in exposure. This tree grew in an
12 enclosed stand environment, which is clear from the growth habit of the tree.
13 Trees that grow in an enclosed stand are sheltered. Sheltered trees develop
14 shallow root systems and grow rapidly toward the available light, producing
15 slender trunks with high canopies. This structure of growth is stable in an
16 enclosed stand but not in the open. The subject tree represents all these factors.
17 Given the conditions outlined above and the lack of available treatment to
18 sufficiently mitigate the hazard posed, I must advise the removal of this tree."
19

- 20 5. The tree was also evaluated by Kevin Husemann, a Certified Arborist or the Redmond
21 Parks and Recreation. He also noted the co-dominate condition at the base of tree with
22 the stem about 5 feet above the ground. He did not think that the co-dominance had
23 progressed enough to cause concern for the large stem to break away. He saw no
24 evidence of exposure of the roots, root damage or compaction of soil.
25

26 He evaluated the ability of the tree to take wind exposure by dividing the height of the
27 tree by its diameter. The calculations came out at 41 and 48, respectively, for the two
28 trunks. The recommended ratio is anything below 50.
29
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1 6. The application for a permit to remove the tree was denied by the Department of
2 Planning and Community Development. The conclusion was that the tree is not
3 hazardous at this time and that the permit to remove a landmark tree could not therefore
4 be granted.

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6 7. Any conclusion of law deemed to be a finding of fact is hereby adopted as such.

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8 From these findings of fact the Hearing Examiner makes the following:

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10 **CONCLUSIONS OF LAW**

11 1. A request for a tree removal permit is a Type I review made by the Planning Department.
12 An appeal of the decision of the Planning Department is made to the Hearing Examiner.
13 RCDG 20F.30-020.

14
15 2. RCDG 20D.80.20.070 (3)(c) provides:

16
17 Landmark Trees shall not be removed unless an exception has been applied for and
18 granted. A Landmark tree is defined as:

19
20 any healthy tree over thirty inches in diameter or any tree that is particularly
21 impressive or unusual due to its size, shape, age, historical significance or any
22 other trait that epitomizes the character of the species. RCDG 20A.20.120 "L".

23
24 3. Exceptions to the Landmark Tree removal prohibition are authorized by RCDG
25 20D.80.20-090, which provides in part as follows:

26
27 (1) Exception Criteria. An exception shall not be granted unless criteria (1)(a) and
28 (1)(b) of this section are satisfied:

29
30 (a) The exception is necessary because:

- 1 (i) There are special circumstances related to the size, shape,
2 topography, location or surrounds of the subject property; or
3 (ii) Strict compliance with the provision of this code may jeopardize
4 reasonable use of this property;
5 (iii) Proposed vegetation removal, replacement, and any mitigative
6 measures proposed are consistent with the purpose and intent of the
7 regulations;
8 (iv) The granting of the exception or standard reduction will not be
9 detrimental to the public welfare or injurious to other property in the
10 vicinity.

11
12 (b) If an exception is granted below the required minimum retention standard of
13 35 percent, tree replacement shall be at a minimum of three trees for each
14 significant tree removed.

15
16 (c) Proposed tree removal, replacement, and any mitigation proposed are
17 consistent with the purpose and intent of this division.
18

19 4. The purpose and intent of Redmond's tree protection provisions are stated in RCDG
20 20D.80.20-010. The forests and trees provide a variety of benefits, including providing
21 varied and rich habitats for wildlife, moderating the effects of wind and temperature,
22 stabilizing and enriching the soil, slowing run-off from precipitation and reducing soil
23 erosion, improving air quality, improving water quality, masking unwanted sound,
24 providing visual relief and screening buffers, providing recreational benefits, enhancing
25 the economic value of developments, and providing a valuable asset to the community as
26 a whole. The subject tree provides most of these benefits, and the tree should not be
27 removed unless it satisfies the exception criteria.

28
29 5. The Department of Planning and Community Development determined that the tree was
30 not hazardous at this time, but this conclusion carries with it a strong suspicion that it is

only a matter of time when the tree will constitute a hazard to the residences within its radius. The Seremeks' residence is only 25 feet from this tall tree, and the residence on Lot 37 is also at risk.

6. In the Hearing Examiner's view, trees are valuable assets in Redmond and should be preserved except when the exception criteria are satisfied. Here the criteria are satisfied. The progression to a condition of instability is already underway. The tree looms over the Seremek's house like the Sword of Damocles. Failure of this tree is inevitable in the future, although not imminent. The Seremeks should not be required to wait with bated breath until they can show that they are in grave risk of injury or damage. The permit should be approved subject to the condition that as much as possible of the tree remain standing as a wildlife snag.

7. Any finding of fact deemed to be a conclusion of law is adopted as such.

DECISION

The appeal of Steve Watkins of Rick Burnstead Construction is **GRANTED**. A permit to remove the branch of the co-dominate tree which leans toward the residence on Lot 38 should be granted subject to the following conditions:

1. Removal of the tree shall be accomplished under the supervision of a Certified Arborist.
2. As much of the tree as possible should be retained as a wildlife snag.

Done this 26th Day of November 2003.

/s/ Gordon F. Crandall

GORDON F. CRANDALL
HEARING EXAMINER

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NOTICE OF RIGHT OF APPEAL

You are hereby notified that the foregoing Findings of Fact, Conclusions, and Decision are the final action on this application subject to the right of appeal to the Redmond City Council. Appeal procedures are governed by RCDG 20F.30.40-110 (Ordinance 2118) to which the reader is referred for detailed instructions. The written appeal must be received by the **Redmond Permit Center** no later than **5:00 P.M. on December 12, 2003, or within 10 business days following final action by the Hearing Examiner if a request for reconsideration is filed.** Please include the application number on any correspondence regarding this case.

Rick Burnstead Construction Tree Appeal -
7 of 7
11/26/2003

**City of Redmond
Office of the Hearing Examiner
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